

FAMILY COURT MATTER

RESPONSE TO REQUEST TO ESTABLISH CHILD CUSTODY AND PARENTING TIME

Forms to use when responding to an action to establish child custody and parenting time:

Answer and Counter-Petition to Establish Custody and Parenting Time

Responsive Notice of Motion and Motion to Establish Child Custody and Parenting Time

Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time

Instructions – Financial Affidavit for Child Support

Financial Affidavit for Child Support

Form 11.1 – Confidential Information Form

Form 11.2 – Confidential Financial Source Documents

Affidavit of Service by Mail

Affidavit of Personal Service

SEE ALSO “PARENTAL GUIDE TO MAKING CHILD-FOCUSED PARENTING TIME DECISIONS”

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

IMPORTANT NOTICES

- You **CANNOT** use these forms if there is already a Court Order awarding custody.
- If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the Court may be not able to immediately decide your request to establish custody.
- Court personnel and the county attorney's office **CANNOT** help you fill out the form(s) in this packet.
- You should see a lawyer if you do not know how to answer the questions on these forms or if you think the other party will hire a lawyer.
- The Court expects every person who appears in court without a lawyer to know and follow the law. If you act as your own lawyer, you must do what a lawyer would do.
- Type your answers or print neatly using dark ink.
- If you need more space to answer a question use an additional full sheet of paper.
- **Where to Get a Certified Copy of the Recognition of Parentage ("ROP")**

Certified Copies of the Minnesota Recognition of Parentage can be obtained by completing and notarizing the required form provided by the Minnesota Department of Health. You can get the form from the Minnesota Department of Health website at <http://www.health.state.mn.us/divs/chs/osr/ropform.pdf> or you can call 651-201-5970 to request a copy of the form. There is a fee for a certified copy. The completed form and fee should be mailed to:

Minnesota Department of Health
Recognition of Parentage Program
Office of the State Registrar
P.O. Box 64499
St. Paul, MN 55164-0499

INSTRUCTIONS

Step 1

Fill Out the *Answer and Counter-Petition to Establish Custody and Parenting Time* Form

Fill out the *Answer and Counter-Petition to Establish Custody and Parenting Time* form. The *Answer and Counter-Petition to Establish Custody and Parenting Time* is divided into two parts. The first part gives the Court your response to the Petitioner's requests in their *Petition to Establish Custody and Parenting Time*. The second part gives the Court information about you, the other parent, your child(ren), other court orders, and your requests for custody, parenting time, and child support.

FILL IN THE TOP PART OF THE FORM:

- Fill in the County and Judicial District where the case is filed.
- Write in the court file number, if applicable. If the other party's documents have a court file number listed, you can put that number on your *Answer and Counter-Petition to Establish Custody and Parenting Time*. If no number is listed on their paperwork, then leave the court file number blank.
- On the line after "In Re the Custody of," print the name and birth date of each child involved in this action.
- On the line marked "Petitioner" print the other party's name as it appears on the *Petition to Establish Custody and Parenting Time*.
- On the line marked "Respondent" print your full name.

FILL OUT THE REST OF THE FORM:

NOTE: The following instructions are numbered the same as the paragraphs/questions on the *Answer and Counter-Petition to Establish Custody and Parenting Time* form.

For each of the following four questions, look at each paragraph numbered 1 through 11 in the *Petition to Establish Custody and Parenting Time*. For each paragraph of the *Petition*, you must say whether it is true, not true, partly true and partly not true, or state that you do not have enough information to answer the statement.

1. If a paragraph is TRUE, put the paragraph number(s) on the lines provided.
2. If a paragraph is NOT TRUE, put the paragraph number(s) on the lines provided.
3. If a paragraph is partly true and partly not true, put the paragraph number(s) on the lines provided.

4. If you don't know whether a paragraph is true or not true, put the paragraph number(s) on the lines provided.

Answer questions 1-11 starting on Page 2 of the form, which gives the court information about you, the other party, and the minor child(ren) involved in this case.

1. Check whether Petitioner is the father or mother of the minor child(ren). Provide the name and address of the Petitioner. If the current address of the other parent is unknown or unavailable to you, write "unknown" or "unavailable."
2. Check whether you are the father or mother of the minor child(ren). Provide your complete name and address where you live.
3. Provide the full name and birth date of the child(ren) involved in this action.
4. If the child(ren) currently live(s) with you, check the box for "Me." If the child(ren) currently live(s) with the other parent, check the box for "Other parent" and provide the full name of the other parent on the blank line. If the child(ren) currently live(s) with someone else, check the box for "Other person" and provide the full name of this person(s). Provide the street address, city, county, state, and zip code of where the child(ren) is/are living. Fill in the date of how long the child(ren) has/have lived at that address. If the child(ren) has/have lived at the current address less than six months, provide the dates and locations of where the child(ren) has/have been living during the last six months.
5. If Petitioner attached a certified copy of the Recognition of Parentage (ROP) to his/her *Petition to Establish Custody and Parenting Time*, check the first box. If Petitioner stated in his/her Petition that he/she requested a copy of the ROP and will file it when he/she receives it, check the second box. If you will be providing the court with a certified copy of the ROP, check the third box.
6. Check YES if there is a court appointed guardian or conservator for the child(ren) and fill in all requested information (Court File number, County, State, and name of guardian/custodian. Check NO if no appointment has been made.
7. Read what *legal custody* and *physical custody* means and check the appropriate boxes based on what you are requesting.
8. Check YES if there is a child protection case for the child(ren) and fill in all information (County, State, Court File Number, child protection worker's name). Check NO if no such case is open.
9. Check YES if there is a current *Order for Protection* between you and the other parent and fill in all information (other parent's name, County, State, and Court File Number). Check NO if there is no order or current *Order for Protection* case. If there is an Order for Protection and the Petitioner did not include a copy with the Petition, you should provide a copy to the Court, but

this is only necessary if the Order is from a different county or state than this Custody and Parenting Time case.

10. Parenting time is the time a parent spends with the child(ren), regardless of who has custody of the child. If you are asking for joint physical custody, check the boxes to grant parenting time to the Mother and Father. If you are asking for sole physical custody, check the box to grant parenting time to the other parent. Or, if you think your child(ren) would not be safe alone with the other parent, you can ask the Court to make parenting time “supervised.” You must explain why supervision is needed in the *Affidavit in Support of Motion to Establish Custody and Parenting Time* (Step 3). **NOTE:** Supervised parenting time is not likely to be ordered unless unsupervised visits will cause harm to the child(ren). If you check “deny parenting time,” you are asking that the court give the other parent NO parenting time. You must explain why no parenting time should be ordered in the *Affidavit in Support of Motion to Establish Custody and Parenting Time* (Step 3).
11. Child support is money parents pay for the care, support, and education of the child(ren). It may include a monthly court ordered amount for basic support, child care support, and medical support. The MN Department of Human Services (DHS) has created a child support calculator to estimate the amount of child support that the court may order on a case. The calculator is on the DHS website at <http://childsupportcalculator.dhs.state.mn.us/>.

Check the first box if there is no existing child support order and you want the Court to establish child support. Check the second box if you are not asking the Court to establish child support. Check the third box if there is an existing child support order for the child(ren) and fill in all of the information (County, State, court file number).

FILL OUT PARAGRAPHS 1-6 where it says “The Respondent requests that the Court grant the following relief.”

1. Check the same box as you checked in Paragraph 7a.
2. Check the same box as you checked in Paragraph 7b.
3. Check the same box as you checked in Paragraph 10.
4. Only check this box this box if you checked the first box in Paragraph 11.
5. You do not have to write anything for this paragraph.
6. Read a. through d. carefully. By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court can order you to pay money to the other party or impose other sanctions.

Fill in your address and phone number. Then date and sign the *Answer and Counter-Petition to Establish Custody* form.

IMPORTANT!

Check with Court Administration in the county where your case is filed to see if the Responsive Motion forms are necessary or if an Initial Case Management Conference will be scheduled.

Step 2

Fill Out the *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* Form

Fill out the *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* form. This form tells the Court and the other parent WHAT you are asking for from the Court.

- Fill in the top part of the form the same as the *Answer and Counter-Petition to Establish Custody and Parenting Time*.
- Fill in the name and address of the other parent in the “TO” section.
- Fill in the date, time, name of judge or judicial officer, and location of the hearing. This information can be found in the other parent’s *Notice of Motion and Motion to Establish Custody and Parenting Time*.

How to fill out the rest of the form:

NOTE: The following instructions are numbered the same as the paragraphs/questions on the *Responsive Notice of Motion and Motion To Establish Custody and Parenting Time* form.

1. Print the full name and date of birth of each child for whom the other party wishes to establish custody and parenting time.
2. State how you and the child(ren) are related; e.g. mother.
3. Check off the type of legal custody you would like the Court to order. This should be the same as what you requested in your *Answer and Counter-Petition to Establish Custody and Parenting Time*.
4. Check off the type of physical custody you would like the court to order. This should be the same as what you requested in your *Answer and Counter-Petition to Establish Custody and Parenting Time*. You will write in your proposed parenting time schedule at Paragraph 6.
5. Check off whether parenting time with the child(ren) should be supervised or unsupervised.
6. Use this paragraph to explain when each parent will have parenting time with the child(ren), whether you are asking for joint custody or sole custody. If you are asking for sole physical custody, check the box for “Other parent” and state specifically when the other parent will have

time with the child(ren.) If you are asking for joint physical custody, check the boxes for “Me” and “Other parent” and explain which parent has responsibility for the child(ren) at all times.

The parenting time schedule you request must be what is best for the child(ren). This will depend upon the age of the child(ren) and the parents’ schedules. Read the pamphlet “A Parental Guide to Making Child-Focused Parenting Time Decisions” which is available at the courthouse or at http://www.mncourts.gov/documents/0/Public/Court_Information_Office/PARENTING_TIME_PAMPHLET.pdf. Child development experts wrote this pamphlet to help parents and judges understand the needs of children and how those needs change as a child gets older. In setting out a schedule, you should be very specific. For example: “Weekends – every other weekend from Friday at 5:00 p.m. to Sunday at 5:00 p.m.” Weeknights – one weeknight per week from after school to 7:00 p.m.” Include in your schedule such matters as who should provide transportation, and where exchanges should take place. Holidays may include, but are not limited to, the following: New Years Day, Easter, Memorial Day weekend, Fourth of July, Labor Day weekend, Thanksgiving Day, and Christmas. Some parents alternate holidays each year so that, for example, on Memorial Day weekend the child(ren) would be with the mother in odd-numbered years and with the father in even-numbered years. The next holiday would be Fourth of July and the child(ren) would be with the father in odd-numbered years and with the mother in even-numbered years. Other parents keep the same holidays each year so that, for example, the child(ren) spends every Christmas Eve with the mother and every Christmas Day with the father. Under “Other” you may want to include how you would like to handle Mother’s Day, Father’s Day, and any other special days.

7. To answer this question, check off how you would like the Court to decide the issue of child support.
- Check box (a) if the child(ren) will live with you and you want the other party to pay you a monthly child support amount according to state child support guidelines.
 - Check box (b) if you will be paying child support to the other party.
 - Check box (c) if there is currently a court order regarding child support. Fill in who pays the support to who, how much is paid, and the court file number.
 - Check box (d) if you want to make any other requests regarding child support.

You may be able to ask to pay/receive more or less than the guideline amount. If you want to ask for an amount other than the guideline amount, read Minn. Stat. 518A.43 and explain why you want to deviate from the guideline amount, and how much you want child support to be. You can get a copy of the statute at the law library or online at <http://www.leg.state.mn.us/leg/statutes.asp>.

- 8-10. You do not need to write anything for questions 8-10. If child support is requested, the Court will also consider who should pay the medical, dental, and daycare expenses of the child(ren).
11. If you want the Court to order anything else, write it here.
12. You don’t have to write anything for this question. This is catchall language so the Court is not limited in what it can order.

Read the Verification and Acknowledgment carefully. By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court can order you to pay money to the other party or impose other sanctions.

Fill in your name and address. Then date and sign the *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* form.

Step 3

Fill Out the Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time Form

Fill out the *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time* form. This form tells the Court and the other party what you are asking for from the Court and WHY you are asking for it.

- Fill in the top part of the form the same way you did on your *Answer and Counter-Petition to Establish Custody and Parenting Time* and *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* forms in Steps 1 and 2.
- Where the form reads “STATE OF MINNESOTA, COUNTY OF _____,” on the blank line after “COUNTY OF,” fill in the name of the county where you will sign the *Affidavit*.
- Write your name on the blank line above paragraph/question number 1.

Signing the Affidavit under penalty of perjury means you are stating that the information in the Affidavit is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

NOTE: The following instructions are numbered the same as the questions on the *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*.

1. You do not need to write anything for this paragraph.
2. Check whether a child protection case is or is not now taking place in Minnesota or in any other state. If it is, list the County, State, court file number of the case, and the name of the child protection worker. If you have any juvenile court orders or papers from the child protection worker, attach a copy of these to your *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*.
3. Check whether an *Order for Protection* involving you and the other party or child(ren) is or is not now in effect in Minnesota or in any other state. If it is, write in the county, state and file number,

and attach a copy of the *Order for Protection* to your *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*.

4. Check off whether the child(ren) currently live(s) with you or the Petitioner. Write your relationship to the child(ren) as well as Petitioner's relationship to the child(ren). List the child(ren)'s current address, and how long the child(ren) have lived that address.
5. Check off who should have **legal** custody of the child(ren) the same as you did on your *Answer and Counter-Petition to Establish Custody and Parenting Time* and *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time* and write in the reasons you think this is best for the child(ren).
6. Check off who should have **physical** custody of the child(ren) the same as you did in your *Answer and Counter-Petition to Establish Custody and Parenting Time* and *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*. If you are asking for joint physical custody, write in the schedule you think is best for the child(ren).
7. Write in why your request for physical custody is best for the child(ren). Include as many details and facts as possible for each factor listed so the Court can make a decision. The Court considers best interest factors to determine custody if there is no custody order. Include details about each of the following factors:
 - a) Describe the child(ren)'s physical, emotional, cultural, spiritual, and other needs and the effect of the proposed arrangements on the child(ren)'s needs and development;
 - b) Describe the child(ren)'s special medical, mental health, or educational needs that may require special parenting arrangements or access to recommended services;
 - c) Explain the custody arrangement the child(ren) want;
 - d) Describe any domestic abuse in both your household and in the other parent's household;
 - e) Describe the physical, mental, or chemical health issues either parent may have that affects the child(ren)'s safety or developmental needs (chemical health issues may mean issues with drugs, alcohol, or other illegal substances);
 - f) Describe how each parent has participated in providing care for the child(ren) by writing down what you and the other parent have done in the past as well as each and every day to take care of the child(ren);
 - g) Write down how you and the other parent will maintain consistency in providing care and meeting the ongoing developmental, emotional, spiritual, and cultural needs of the child(ren);
 - h) Describe how changes to home, school, and community will affect the child(ren)'s well-being and development;
 - i) Describe the effect of the proposed arrangements on the ongoing relationships between the child(ren) and each parent, siblings, and other significant persons in the child(ren)'s life;
 - j) Write down what you see as the benefits of the child(ren) to maximize parenting time with each parent and the detriment to the child(ren) in limiting parenting time with either parent;
 - k) Write down what you do to encourage and permit frequent and continuing contact by the other parent with the child(ren) and what the other parent does to encourage and permit frequent and continuing contact by the child(ren) with you;

- 1) Write down how you and the other parent are willing and able to cooperate in raising the child(ren); how you and the other parent will maximize the sharing of information and minimize the exposure of the child(ren) to conflict; and what methods you and the other parent plan to use for resolving disputes regarding any major decisions concerning the life of the child(ren).
8. Write down your response to paragraph 4 of the other party's *Affidavit in Support of Motion to Establish Custody and Parenting Time*.
9. Write down why you want the parenting time schedule you asked for in your *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*. Include as many facts as possible to show the Court that your schedule is in the best interests of the child(ren). If there are limits, such as no overnights, write in why the Court should order these limits.
10. If your parenting time schedule is different from the other party's, write down your response to paragraph 3 of the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*.
11. Check off whether you are asking for supervised parenting time. If you want supervised parenting time, write down why. Be specific about the reasons you believe the other parent's parenting time should be supervised. The Court will grant parenting time that enables the child(ren) and the other parent to maintain a parent-child relationship that will be in the best interest(s) of the child(ren). If you are requesting supervised parenting time or other limits, write in the things that have happened and are likely to happen that will put the child(ren)'s physical or emotional health in danger, or will impair the child(ren)'s emotional development if the parenting time is unsupervised. Write in the name of the person or agency you would like to supervise the parenting time.
12. Check off whether the Petitioner is requesting supervised parenting time. If YES, write down your response to paragraph 6 of the other party's *Affidavit in Support of Motion to Establish Custody and Parenting Time*.
13. Check whether you are requesting that the child(ren) be transferred at a parenting time exchange center if one is located in the area and for both parties to follow all rules of the parenting time exchange center. If yes, write in why this is in the child(ren)'s best interests. If no, write in a specific location other than a parenting time exchange center for the transfer and write in the reasons for that request. **NOTE:** The parenting time exchange center may require the parties to pay a fee for each exchange.

Questions 14 through 35 provide the court with information to be able to determine appropriate child support. Answer all applicable questions to the best of your knowledge. Much of the financial information will be repeated when you complete the *Financial Affidavit for Child Support* in Step 4.

36. Write in any additional information you think might be helpful to the Court when it considers your response and request to establish custody and parenting time of the child(ren).

Step 4

Complete the *Financial Affidavit for Child Support* Form

If child support is being requested, fill out the form called *Financial Affidavit for Child Support* included in this packet. This form asks for your income information. The information you put on the *Financial Affidavit for Child Support* should be the same in the *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*. The *Financial Affidavit for Child Support* has separate instructions that you should read. It is very important to attach to the *Financial Affidavit for Child Support* any proof you have regarding your income. This proof may include the last 3 months of pay stubs, income tax returns, or other documents. Make sure the copy of the *Financial Affidavit for Child Support* you provide to the other party also has copies of your proof of income attached.

Step 5

Complete Confidential Information Forms

NOTE! Certain information is considered confidential and not available to the public. To keep this information private and not available to the public, you must attach Form 11.1 or Form 11.2 to certain documents that contain confidential information.

See Rule 11 of the Minnesota General Rules of Practice for more information. One form can be used for all documents containing confidential information. Examples of documents that have confidential information include:

- Paycheck stubs, employer statements, W-2 forms, or business income and business expenses
- Copies of your tax returns and schedules
- Bank statements
- Credit card statements
- Check registers

To protect your privacy, the other party, and your child(ren), all social security numbers, employer identification numbers, and financial account numbers **must not be listed on papers you file with the court.** You must use Form 11.1 when providing these confidential numbers to the court. Form 11.1 can be found at www.mncourts.gov/forms under the court forms category of “Confidential Information” and is court form number CON111. Failure to do this means these numbers could be available to the general public and you could be charged court costs and the court may order other sanctions against you for the failure to keep your and the other party’s social security number, employer identification number, and/or financial account numbers private. **If these numbers are already on file with the court, you do not need to submit another Form 11.1.**

Step 6

Make Copies of Forms

1. Make **two (2) copies** of the following documents:
 - *Answer and Counter-Petition to Establish Custody and Parenting Time*,
 - *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*,
 - *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*,
 - *Financial Affidavit for Child Support* (if applicable), and
 - All attachments.
2. Keep one copy of each form for yourself (make sure you bring your copies with you to Court on the day of the hearing).
3. Step 7 tells you how to serve the second copy of each form upon the other party. Step 9 tells you how to file the forms with the Court.

Step 7

Serve Notice on the Other Party

You must arrange for the other party to receive complete copies of all documents you have prepared for the hearing. This is called "service of process." **A party to an action is not allowed to serve the other party to the action.** You must have someone else who is over the age of 18 serve the other party. The papers may be served by mail, or personally. **You CANNOT be the person to serve the forms.** Papers cannot be served on legal holidays.

The deadline for serving all of your forms depends on how you serve them and whether you are raising new issues in your *Responsive Notice of Motion to Establish Custody and Parenting Time*. However, your *Answer and Counter-Petition to Establish Custody and Parenting Time* MUST be served within twenty (20) days of being served with the *Summons and Petition to Establish Custody and Parenting Time*. If you do not serve your *Answer and Counter-Petition to Establish Custody and Parenting Time* within those twenty (20) days, your response may not be considered.

To personally serve the other party, follow these instructions:

1. The server (not you) hands the other party (or their attorney, if they have one) one copy of all of the completed forms listed in Step 6 above.
2. The server must give the papers to the other party (or their attorney, if they have one) either:
 - a. **At least five (5) days before the hearing date AND within twenty (20) days of being served with the *Summons and Petition to Establish Custody and Parenting Time*** if the papers only respond to issues raised in the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*.

OR

b. At least ten (10) days before the hearing AND within twenty (20) days of being served with the *Summons and Petition to Establish Custody and Parenting Time* if the papers raise new issues other than those raised in the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*.

To serve the papers by mail, follow these instructions:

1. The server (not you) places one copy of all of the completed forms listed in Step 6 above in an envelope. Then the server writes your return address and the last known address of the other party (or their attorney, if they have one) on the front of the envelope. Make sure that the correct amount of postage is placed on the envelope.
2. The server must mail the envelope containing the forms to the other party (or their attorney, if they have one) either:
 - a. At least eight (8) days before the hearing AND within twenty (20) days of being served with the *Summons and Petition to Establish Custody and Parenting Time*** if the papers only respond to issues raised in the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*.

OR

b. At least thirteen (13) days before the hearing AND within twenty (20) days of being served with the *Summons and Petition to Establish Custody and Parenting Time* if the papers raise new issues other than those raised in the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*.

WARNING: The Court may ignore your response if you do not serve and file the responsive papers on time. If you do not know when your papers must be served, either ask an attorney for advice, or serve the papers at least thirteen (13) days before the hearing AND within twenty (20) days of being served with the *Summons and Petition to Establish Custody and Parenting Time*.

Step 8

The Person Who Served the Papers Fills Out the *Affidavit of Service Form*

If your server personally handed the legal papers to the other party, see "A" below. If your server mailed your legal papers to the other party, see "B" below.

A. FOLLOW THESE INSTRUCTIONS ONLY IF THE SERVER PERSONALLY HANDED THE PAPERS TO THE OTHER PARTY

- **After** the forms have been hand-delivered to the other party (or their attorney, if they have

one), **the person who handed the papers to the other party or their attorney** must fill out the *Affidavit of Personal Service* form. This proves to the Court that the other party received a copy of the *Answer and Counter-Petition to Establish Custody and Parenting Time*, *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*, *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*, *Financial Affidavit for Child Support*, and supporting documents. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

- Fill out the top part of the form the same as you did on all of your other paperwork.
- Fill in the following:
 - the name of the person who handed the forms to the other party;
 - the date of birth of the person who handed the forms to the other party;
 - the date that the papers were personally served (handed to the other party);
 - the name of the person to whom the papers were given; and
 - the address of the location where the documents were served.
- Print the name and address of the person who handed the forms to the other party.

After the *Affidavit of Personal Service* has been signed, make a copy of it for your records.

B. FOLLOW THESE INSTRUCTIONS ONLY IF THE PAPERS WERE MAILED TO THE OTHER PARTY

- **After** the envelope containing the forms has been mailed to the other party (or their Attorney, if they have one), then **the person who placed the envelope in the mail must fill out the *Affidavit of Service by Mail* form.** This proves to the Court that the other party was served with a copy of the *Answer and Counter-Petition to Establish Custody and Parenting Time*, *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*, *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*, *Financial Affidavit for Child Support*, and supporting documents. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.
- Fill in the top part of the form the same as you did on all of your other paperwork.
- Fill in the following:
 - the name of the person who mailed the envelope;
 - the date of birth of the person who mailed the envelope;
 - the date on which the person put the envelope in the mail;

- the address of the other party; and
- the city and state where the envelope was put in the mail.
- Fill in the name and address of the person who mailed the forms to the other party.

After it has been signed, make one copy of the *Affidavit of Service by Mail* for your records.

Step 9

File the Forms with the Court

File the following documents with the court at least five (5) days before the hearing date (or ten (10) days if your papers raise new issues not included in the other party's *Notice of Motion and Motion to Establish Custody and Parenting Time*). You can mail them to the Court, but you must allow three (3) extra days for mailing - put them in the mail at least eight (8) days before the hearing, (or thirteen (13) days before the hearing if the papers raise new issues).

FILE:

- The *Answer and Counter-Petition to Establish Custody and Parenting Time*,
- The *Responsive Notice of Motion and Motion to Establish Custody and Parenting Time*,
- The *Affidavit in Support of Responsive Motion to Establish Custody and Parenting Time*, and all attachments;
- The *Financial Affidavit for Child Support with attachments* - if applicable;
- The *Confidential Information Form (Form 11.1)* – if applicable,
- The *Confidential Financial Source Documents (Form 11.2)* – if applicable, and
- The *Affidavit of Personal Service* or *Affidavit of Service by Mail*

Contact Court Administration in the county where the case is filed to find out the amount of the filing fee. Make checks payable to “Court Administrator.”

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask Court Administration for the *In Forma Pauperis* (IFP) (Fee Waiver) forms or download the forms at <http://www.mncourts.gov/default.aspx?page=513&item=93&itemType=packetDetails>. You need to fill out the forms and sign them. Your fee waiver forms will be reviewed by a judge who will determine whether you must pay the filing fee or if it can be waived. If the judge does not sign the form which waives the fee, you must be prepared to pay the filing fee. The court administrator cannot accept your forms without the filing fee or a waiver signed by a judge.

Step 10

Appear in Court

You must go to Court on the date set for the hearing. Be sure to be on time. Bring with you to the hearing your copies of the papers you filed with the Court.

If you disagree with the other party's request, there will usually be two court hearings. At the first hearing, the judge or judicial officer will only consider the written paperwork you and the other party filed. The first hearing is short – up to 30 minutes. Do not bring witnesses and evidence to the first hearing, unless instructed to by the court administrator/deputy. Usually the judge will not listen to live testimony at the first hearing. You will only have the opportunity to make a brief statement summarizing your position.

The hearing is very formal. You are expected to know and follow the court rules of procedure. You should be respectful to the other party and to everyone in the courtroom. Do not interrupt the judge or other party. Try to stay calm, and avoid unnecessarily criticizing the other party. Answer any questions from the judge honestly. Direct all your comments to the judge or judicial officer, not the other party.

After the hearing the judge will issue an *Order*. The judge may issue the *Order* at the end of the hearing or may send a copy of the *Order* to you in the mail.

On many occasions at the end of the first hearing the judge or judicial officer will ask for a custody evaluation in order to have someone gather facts to help the judge or judicial officer make a decision. A trained individual completes an evaluation of both homes and interviews witnesses and documents. This person then makes a recommendation to the Court. If a custody evaluation is ordered, the gap between the first, short hearing and the second evidentiary hearing often will be at least several months. **Both parties will be expected to pay the cost of such evaluation, which must be paid in full before completion of the evaluation.**

Finally, be aware that this matter may be scheduled for a Settlement Conference. The purpose of the Settlement Conference is to facilitate discussions with a judge in settling the case before trial. Each of you will be expected to be present at that Settlement Conference, along with the person who completed the custody evaluation. You will be expected to seriously consider settlement proposals that would be in the best interests of the child/children.